

**THE PUBLIC SERVICE COMMISSION**

**OF SOUTH CAROLINA**

**DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

<b>IN RE:</b>	Friends of the Earth and Sierra Club,	)	
	Complainant/Petitioner v. South Carolina	)	
	Electric & Gas Company,	)	
	Defendant/Respondent	)	
		)	
<b>IN RE:</b>	Request of the South Carolina Office of	)	<b>ORS'S RESPONSE TO JOINT APPLICANTS' MOTION TO COMPEL</b>
	Regulatory Staff for Rate Relief to SCE&G	)	
	Rates Pursuant to S.C. Code Ann. § 58-27-	)	
	920	)	
		)	
		)	
<b>IN RE:</b>	Joint Application and Petition of South	)	
	Carolina Electric & Gas Company and	)	
	Dominion Energy, Incorporated for Review	)	
	and Approval of a Proposed Business	)	
	Combination between SCANA Corporation	)	
	and Dominion Energy, Incorporated, as May	)	
	Be Required, and for a Prudency	)	
	Determination Regarding the Abandonment	)	
	of the V.C. Summer Units 2 & 3 Project	)	
	and Associated Customer Benefits and Cost	)	
	Recovery Plans	)	

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**INTRODUCTION**

In their motion to compel, South Carolina Electric & Gas ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy" or collectively with SCE&G, "Joint Applicants") wrongly claim that the South Carolina Office of Regulatory Staff's ("ORS's") responses to the Joint Applicants' overbroad discovery requests are incomplete. In fact, ORS provided the most complete discovery responses possible at this point in these proceedings. ORS's detailed

responses included identifying over 50 witnesses with knowledge about the issues in these proceedings and identifying 16 categories of documents that contain information relevant to the proceedings and that are also available to the Joint Applicants already.

ORS simply cannot provide any further detail at this point in response to the Joint Applicants' discovery responses due to the Joint Applicants' failure to fulfill their own discovery obligations in this matter. For example, the Joint Applicants' discovery requests seek disclosure of the information that ORS will rely on at the hearing in this matter. ORS cannot do that until the Joint Applicants fully respond to ORS's discovery requests – which the Joint Applicants recently acknowledged they have not done yet and which they have been ordered by the Commission to do by July 6. ORS is not able to identify witness and exhibits for the hearing until it has received that information and had sufficient time to process it. Of course, ORS will disclose its hearing exhibits and witnesses in accordance with the schedule set by the Commission.

In sum, ORS acted in good faith in providing the most complete discovery responses it can provide at this time, and the Joint Applicants' motion to compel should be denied.

### **DISCUSSION**

**A. ORS's Responses to the Joint Applicants' Overbroad Interrogatories Are Complete, Particularly in Light of the Joint Applicants' Failure to Provide Highly Probative Information that the Commission Has Ordered.**

The discovery requests at issue in this motion could not be more overbroad. The requests seek disclosure of all witnesses and documents relevant to the issues in this case and/or that ORS will use at a hearing in this matter:

- "Please give the names and addresses of persons known to ORS or counsel to be witnesses concerning the facts of the case . . . ;"
- "Please provide a list of the witness names ORS intends to call and the subject matter for which each witness intends to testify at the hearing in this matter;"

- “Please set forth a list of . . . Documents in possession of ORS that relate to the claims or defenses in this docket;”

(Motion, Ex. 1 at 4.)

In response, ORS made a good faith effort to provide the information currently in its possession. For example, ORS identified over 50 witnesses with knowledge of the V.C. Summer Project and summarized the basis of the witnesses’ knowledge. (Motion, Ex. 2, at 2-8.) ORS also identified 16 categories of available documents that relate to the project. (*Id.* at 9-10.) These categories of documents not only include publicly available transcripts and filings with this Commission, but also SCE&G communications that ORS has not even received yet – communications that SCE&G only agreed to produce after ORS filed a motion to compel. The Joint Applicants’ motion to compel should be denied because ORS’s responses are complete and meet ORS’s obligations at this point in discovery in these consolidated proceedings. The Joint Applicants’ motion is factually inaccurate and applies an incorrect legal standard in arguing otherwise.

For example, with respect to Interrogatory No. 1, the Joint Applicants wrongly claim that ORS “has not indicated whether written or recorded statements have been taken from any of [the witnesses].” (Motion at 4.) In fact, ORS stated in response to Interrogatory No. 1 that “[a]side from presentations and testimony before the Public Service Commission, other state commissions, and subcommittees of the South Carolina General Assembly – which are also publicly available and which SCE&G and Dominion have access to or already possess – ORS is not in possession of written or recorded statements taken from these witnesses.” (Motion, Ex. 2 at 8.)

Similarly, ORS’s response to Interrogatory No. 3 was also sufficient, particularly given the overbreadth of the Interrogatory. The Joint Applicants wrongly suggest that ORS based its

response to Interrogatory on S.C. R. Civ. P. 33(c). (Motion at 5.) Rule 33(c) permits a party to answer an interrogatory by producing business records that answer an interrogatory in lieu of writing a response to the interrogatory. However, the Joint Applicants' Interrogatory No. 3 did not seek specific information that could be answered by production of any documents. Rather, it sought a list of documents that "relate to" the claims or defenses in this docket. Of course, there are hundreds of thousands of documents that "relate to" the claims or defenses in this docket, and it would be impossible for ORS to list every single one of those documents. Nevertheless, ORS made a good faith effort to respond to the interrogatory by detailing the 16 categories of documents of which ORS is currently aware that contain relevant information. ORS's response to this overbroad interrogatory was as complete as possible under those circumstances.

While ORS's responses to these overbroad requests were appropriate, ORS understands that eventually in these proceedings the parties – including ORS – will need to identify the witnesses and documents that they will rely on at the hearing in this matter. As counsel for ORS indicated in his conferral letter to opposing counsel, ORS is committed to providing that information to the Joint Applicants. (Motion, Ex. 4.) Of course, it is not even possible for ORS to provide that information at this point in time because SCE&G initially refused to provide ORS with highly probative information (such as documents related to the Bechtel Report and ancillary investigations regarding the Project) that ORS sought in discovery requests. It is only recently that SCE&G belatedly agreed to provide this information after ORS moved to compel production of the information (and which the Commission has now ordered be produced). ORS's responses – which provided the information ORS currently had and agreed to supplement responses with information that it will use at any hearing – were particularly appropriate, given that ORS's

inability to identify information that will be used at any hearing is due to the Joint Applicants' failure to meet their own discovery obligations.

In this respect, the Joint Applicants also misconstrue the objection ORS raised to the discovery requests based on ORS's unique role in representing the public interest in these proceedings. (Motion at 3.) While ORS did object to being the subject of discovery requests because it is not the source of facts and evidence in these proceedings, ORS still made a good faith effort to respond to the Joint Applicants' discovery requests. The Joint Applicants cannot deny the underlying point – ORS is not the source of facts and evidence. This is of critical importance for the instant motion because ORS is not able to effectively respond to discovery requests seeking disclosure of the evidence ORS will ultimately rely on at the hearing until the Joint Applicants themselves have met their discovery obligations – and the Joint Applicants have acknowledged that they have not done so yet.

**B. ORS's Responses to the Joint Applicant's Overbroad Document Requests Are Complete.**

As with its responses to the Joint Applicants' overbroad interrogatories, ORS met its obligations in responding to the Joint Applicant's similarly overbroad and premature document requests. The Joint Applicants' conclusory claim that ORS has failed to respond to Requests for Production Numbers 2, 4, and 7 is not supported. Request for Production No. 2 sought production of "[a]ll . . . Documents or material related in any way to this Docket," while request numbers 4 and 7 both sought production of "[a]ll other Documents and things that ORS intends to offer into evidence at the hearing of this Docket." (Motion, Ex. 2 at 13-14.)

As ORS previously stated with respect to Interrogatory No. 3 (which sought a list of all documents related to the docket), it is simply not feasible or necessary for ORS to have to produce every document related to this docket, much of which involves or originated from SCE&G.

Nonetheless, ORS set forth – both in its discovery responses and in its counsel’s follow-up letter to opposing counsel – the categories of documents in ORS’s possession, which are also already in the possession of the Joint Applicants. ORS’s counsel also explained that the one category of information that the Joint Applicants do not yet possess – the load files produced by Santee Cooper – are available to the Joint Applicants for electronic copying or downloading. (Motion, Ex. 4.)

Likewise, Requests for Production Numbers 4 and 7 also fail for the same reasons as the Joint Applicants’ interrogatories. At this early date, ORS simply cannot provide the Exhibits that it will use at the hearing because the Joint Applicants have not even responded to ORS’s discovery requests yet. Furthermore, as ORS’s counsel explained to the Joint Applicants, the potential witnesses and experts retained by ORS to investigate the issues being investigated in these dockets are still in the process of reviewing documents provided by Santee Cooper. Of course, all the parties will have to provide their exhibits for the hearing in accordance with the Commission’s scheduling order, and ORS will meet its obligations in that respect. ORS’s response that it will provide the information in due time in this proceeding was entirely appropriate, and no intervention by the Commission is warranted.

The Joint Applicants’ claim that ORS should be required to provide a privilege log in response to these documents requests is also unsupported. ORS will not rely on any of its own attorney-client privileged communications at a hearing on this matter, nor will any such privileged communications serve as a basis for ORS’s arguments in this matter. In addition, ORS should not be required to produce a privilege log in response to the overbroad request number 2 which seeks “[a]ll . . . documents related in any way to this Docket.” A privilege log in response

to this overbroad request would require logging literally every single communication with counsel in this matter and is not justified in any way.

For these reasons alone, the Joint Applicants' request for a privilege log should be denied. Beyond that, though, the Joint Applicants again fail to appreciate the difference between themselves and ORS as parties in this proceeding. ORS is not a regulated entity that is generating documents that are an original source of facts about the Project or issues in these proceedings. ORS is also not seeking billions of dollars from the ratepayers for an abandoned project and to be paid for decades. Thus, there is not the same degree of need for scrutiny of privilege claims made by ORS as there is for the Joint Applicants (even if the discovery requests had been reasonable, which they are not).

**C. Interrogatory No. 7 and Request for Production No. 6 Are Overbroad and Improper.**

ORS's objections to Interrogatory No. 7 and Request for Production No. 6 are also well-founded. Interrogatory No. 7 asks that ORS identify all communications it has had – written and oral – since the petition was filed. The Interrogatory does not have any subject matter limitation – it asks for enumeration of every ORS communication, without any subject matter limitations. The staff of ORS has hundreds of communications every day, many of which deal with numerous matters that have nothing to do with this proceeding. It is hard to imagine a more overbroad and unduly burdensome interrogatory. It is not possible for ORS to catalog every single communication that it has every day, nor should it have to catalog all such communications.

Request for Production No. 6 – which seeks production of all communications related to SCE&G since August 1, 2017 – is similarly overbroad and misses the mark of relevancy. The limit of information “related” to SCE&G is not really a limit at all, as ORS has numerous daily communications about all regulated entities or categories of regulated entities (including

SCE&G), many of which have nothing to do with these proceedings. This request fails to appropriately focus the subject matter of information requested to the issues in these proceedings.

Moreover, both Interrogatory No. 7 and Request for Production No. 6 are also improper in what they are requesting, particularly in light of the time periods in the requests. The facts that are relevant to this action occurred in the years prior to the initiation of this petition. Yet both of these requests only seek discovery of communications within the last year. The Joint Applicants fail to proffer any basis for seeking communications that occurred after the most relevant time period, they merely claim that such communications must exist. (Motion at 5.) The communications by ORS after abandonment that are likely to be responsive are those that are also privileged or work product in anticipation and in preparation for these very proceedings. Thus, the Joint Applicants cannot justify seeking communications specifically after the proceeding was filed – and they cannot simply engage in a “fishing expedition” for information from a time period which will plainly involve privileged and work-product protected communications. The Motion for these two requests should be denied.

**D. ORS’s Discovery Responses Were Sufficiently Verified.**

Lastly, the Joint Applicants complain that ORS did not sufficiently verify its discovery responses in accordance with Commission regulations. ORS’s responses were submitted over the signature block containing both ORS’s Chief Counsel as well as its Executive Director. There is no dispute about whether ORS has authorized its discovery responses and that an authorized employee and agent of ORS has verified the responses. If the Executive Director and Chief Counsel of ORS are insufficient, then ORS does not have a sufficient agent to verify the responses; and thus its legal counsel should satisfy the rule. For these reasons, it is not evident



what the Joint Applicants' purported concern is regarding verification of the responses. The Joint Applicants' unfounded objection on this issue should also be rejected.

**CONCLUSION**

For the forgoing reasons, ORS respectfully requests that the Commission deny the Joint Applicants' motion to compel.

[Signature block on following page]

Respectfully submitted,

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